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Just, Natascha ; Puppis, Manuel

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## **Parliament Against Government and Industry: How Switzerland Decided to Implement Net Neutrality Against All Odds**

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This article investigates the net neutrality policy-making process in Switzerland in the past decade, from first attempts to regulate net neutrality to the implementation of regulation in 2019. Based on a qualitative content analysis, the study assesses the arguments employed by various policy-making actors to advocate or prevent particular governance solutions. Results of the empirical analysis show that early attempts to regulate net neutrality failed, but discussions about its handling were continued during the revision of the Telecommunications Act. Though the government was ultimately in favor of including only transparency requirements in law, parliament stood up to government and industry and proposed a net neutrality regulation that is inspired by EU legislation.

*Keywords: net neutrality, policy-making process, qualitative content analysis, small states, Switzerland*

Since its first mention in research in the early 2000s (Wu, 2003; Yoo, 2004), net neutrality has become a policy priority, accompanied by enormous and—for a communications policy issue—almost unprecedented public attention. Research on net neutrality has thus far focused mostly on economic and legal aspects as well as on developments in the U.S. and the EU, while smaller countries' policies and policy-making processes have received scant attention. Similarly, research indicates that debates have mostly revolved around the affirmation or negation of statutory regulation without responding much to calls for evidence-based policymaking (Renda, 2015) or considering the viability of alternative governance options (Latzer, Just, Saurwein, & Slominski, 2003; Latzer, Saurwein, & Just, 2019; Puppis, 2010).

This article investigates the net neutrality policy-making process in a small country—Switzerland. It sketches a decade of net neutrality policymaking, from first parliamentary attempts at regulation to the most recent revision of the Telecommunications Act (TCA), and explores the arguments employed by the actors involved in policymaking to advocate or prevent particular regulatory solutions. The study uses a

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policy-cycle framework, which distinguishes distinct stages of political decision making, and is based on a qualitative content analysis.

This article first revisits the contested meaning of net neutrality and its transformation, the policy objectives pursued with it, and research about net neutrality debates and policy-making processes. Embedded in a discussion of the policy-cycle model and institutional influences on policy outcomes, it then describes the various peculiarities of the Swiss decision-making process and discusses the research questions and the methods of data collection and analysis. This is followed by detailed results of the empirical analysis and a conclusion.

### **The Net Neutrality Principle**

#### ***From Technical and Pricing Issues to Requisite Means for a Plethora of Ends***

During its rise to fame, the meaning of net neutrality underwent a tremendous metamorphosis. Although there is no agreed-on definition, the term generally refers to a principle that all Internet traffic should be treated equally (i.e., should not be blocked, prioritized, or throttled, regardless of content, application, source, or destination). Most of today's reasoning about the indispensability of net neutrality rests on the idea of the original application-blind, layered, end-to-end Internet architecture (van Schewick, 2016), alongside the best effort principle and the traditional bill-and-keep system. Various scholars have cautioned that this reference to an allegedly neutral network is misguided because the Internet at large has not been neutral for a long time (e.g., Renda, 2008; Yoo, 2013). For example, the theoretical possibility of prioritizing data packets and employing quality-of-service management techniques existed long before this debate surfaced (Krämer, Wiewiorra, & Weinhardt, 2013). Furthermore, although the general understanding of net neutrality is very broad, in a strict sense it refers to network management practices that apply to the last-mile Internet service provider (ISP) with a focus on the downloading of content, meaning that any network management practice that occurs outside the last mile would not be considered a violation of net neutrality. Similarly, agreements that guarantee packet precedence by content delivery networks or paid-peering agreements would basically be outside of net neutrality regulation, too (Easley, Guo, & Krämer, 2018). Moreover, the Internet is full of agreements that are governed by private contracts and market forces—a position that is rarely reflected in policy debates.

Altogether, net neutrality has evolved from an originally technical and pricing issue at the infrastructure level, with innovation and competition inhibiting consequences and a focus on ISPs as potential last-mile gatekeepers and their relationship to content/application service providers (CAPs), to an almost catch-all policy term and regulatory remedy for all sorts of Internet problems. As such, while considered an end in itself, net neutrality now assumes the role of a requisite means for various other ends, ranging from innovation (e.g., Bauer & Knieps, 2018; Latzer, 2013; Neute, 2016; Schultze & Whitt, 2016; van Schewick, 2010), traffic management and infrastructure development (e.g., Dischinger et al., 2010; Faulhaber, 2011; Krämer et al., 2013; Maltinsky, Giladi, & Shavitt, 2017; van Schewick, 2015), competition and abusive practices (e.g., Baake & Sudaric, 2018; Faulhaber, 2011; Renda, 2015), public-sphere considerations (Löblich & Musiani, 2014), and questions of diversity and freedom of expression (Audibert & Murray, 2016; Renda, 2015; Sluijs, 2012). This then makes net neutrality a topic that inevitably requires

reconciling political and economic goals (Bauer & Obar, 2014). Though conclusions on the impact of net neutrality regulation are theoretically contested and, because of scarce research, empirically an open question, these objectives are repeatedly invoked in the debates.

Evidently, the originally rather narrow scope of net neutrality has been expanded, and it now stands almost as a guarantor for an overall “open Internet”—a term also more preferably employed in policy debates and law. Kimball (2013) investigates the history of the term in the U.S. and explains how it has been translated by various stakeholders and has absorbed their values and interests through processes of discursive construction. Altogether, this expansion of the meaning increasingly comprises the different layers of the Internet, and correspondingly also issues of content, service, device, or platform neutrality (e.g., Krämer et al., 2013; Pasquale, 2016; Renda, 2015)—all issues essentially outside the scope of strict net neutrality. Although it is questionable whether net neutrality can do justice to this plethora of goals or remedy any of them, these arguments constitute the background against which net neutrality regulation is being developed and discussed—as will also be shown in the empirical analysis of the Swiss policy-making process.

### ***Research on Net Neutrality Debates and Policy-Making Processes***

Net neutrality has become a prominent communications policy topic and has triggered substantial public debate. Although the bulk of research focuses on legal, economic, and technical aspects, fewer studies have explored various aspects of these debates. Even less work has been devoted to systematic inquiries into the various stages of actual net neutrality policy-making processes.

The question of who influences net neutrality debates has been a key concern. Kim, Chung, and Kim (2011) examined who informed the net neutrality debate through the mainstream media as well as through congressional and FCC hearings. Lee, Sang, and Xu (2015) followed suit with a study on information subsidizers on Twitter. Often, the focus is on Internet activism, including the identification of stakeholders involved in online debates and the question of what impact networked mobilization and communication has on the net neutrality issue. Accordingly, Herman and Kim (2014) identified the central websites in the debate, and Faris, Roberts, Etling, Othman, and Benkler (2016) examined the online net neutrality debate in the U.S.

Some have focused more on differences in stakeholders' positions. Ly, MacDonald, and Toze (2012) interviewed stakeholders in Canada and concluded that there are fewer disagreements among stakeholders than are often depicted in the literature. Löblich's (2016) study on civil advocacy groups and activist organizations in the U.S. explains differences in stakeholder positions on the grounds of race, class, trust, and space. Similarly, Cheng, Fleischmann, Wang, Ishita, and Oard (2012) approached differences in stakeholders' positions by examining the value differences among them. The extent to which there are differences among national discourses were tackled by Gerlach (2016), Powell and Cooper (2011), and Shin (2014).

Other work focuses on discursive practices (Kimball, 2013, 2016; Lentz, 2013), the impact of policy metaphors on attitudes toward net neutrality regulation (Hartman, 2012), or media framing (Stiegler & Sprumont, 2013).

Various studies examine the histories or approaches of net neutrality regulation and partly also include details on relevant actors in the decision-making process (e.g., chapters in Belli & De Filippi, 2016; Friedlander, 2016; Gerlach, 2016; Marsden, 2016, 2017).

Fewer studies are explicitly devoted to the examination of the actual policy-making process. Hart (2011) describes the U.S. net neutrality debate from 2006 to 2010 and explains the politics behind it, showing a strong relationship between the debate and partisan politics. Cherry (2007) focuses on the stage of agenda setting and strategies of agenda-denial by opponents of net neutrality regulation. Milosavljević, Poler, and Kerševan Smokvina (2019) provide an in-depth analysis of Slovenia's net neutrality policy from 2010 to 2018.

Altogether, this literature review indicates that studies mostly focus on particular aspects of who is involved in debates and the different positions these stakeholders have, while work that explicitly investigates the formal policy-making process and the arguments of actors involved is less common. Furthermore, many studies are concerned with the U.S., and there is less work on smaller jurisdictions. This article contributes to closing these gaps by systematically investigating the policy-making process and the influence and interests of actors in the political process that eventually led to net neutrality regulation in a small country.

### **Analyzing the Policy-Making Process**

#### ***The Policy-Making Process in Switzerland***

The stage-based approach to decision making, inspired by the policy cycle, is an influential framework for understanding policy processes (Anderson, 1975; Lasswell, 1956; Windhoff-Héritier, 1987). It divides the complex policy process into a series of discrete stages, often labeled problem definition, agenda setting, policy formulation, policy implementation, and policy evaluation. This approach has limitations, most importantly, its sequential analysis of the policy process and its mostly descriptive nature (Sabatier, 2008). Nevertheless, it offers a valuable heuristic and its application in research has produced important insights into the complex preconditions, central influencing factors, and varied outcomes of policy processes (Jann & Wegrich, 2007). It is helpful, among other things, for identifying the actors involved and the arguments they employ in the different stages of policymaking.

Actors' opportunities to influence policymaking along these stages and the resulting policy outcomes vary among political systems. Historical institutionalism with its emphasis on path dependency (Bannerman & Haggart, 2015; Hall & Taylor, 1996; Jann & Wegrich, 2007) is particularly helpful to understand how institutional rules establish distinct logics of decision making that shape both government action and interest-group influence (Immergut, 1992).

The Swiss political system features various institutional characteristics that have distinct effects on policymaking. The existence of a grand-coalition government, bicameralism, federalism, and direct-democratic elements—such as the popular initiative, which provides a possibility to put an issue on the political agenda, sidestepping government and parliament, and the optional referendum, which can be called by those opposing a bill adopted by parliament—result in power sharing and consensual decision making (Immergut, 1992; Papadopoulos, 2001). Hence, Switzerland is considered a “consociational” or “consensus democracy” (Lehmbruch, 1993; Lijphart, 1989, 1999). The prospect of a referendum is an important veto point, as it allows for overriding parliamentary decisions. Consequently, it affects the whole stage of policy formulation, which is usually divided into three distinct phases (Sciarini, 2007).

- The option of a referendum leads to a sophisticated preparliamentary phase. A public consultation takes place for every draft bill the Federal Council (government) proposes, and all interested actors can submit a written response. The desire to make legislative proposals referendum-proof strengthens the influence of interest groups, which in turn favors incremental change and a pro-status-quo bias (Immergut, 1992; Papadopoulos, 2001, 2008).
- Based on the feedback gathered during the preparliamentary phase, the government and the federal administration prepare a second draft of the bill, which is then introduced to parliament. In the subsequent parliamentary phase, the responsible select committees and plenaries of both chambers of parliament discuss the bill.
- After parliament’s final vote on a bill, citizens and organizations opposing the bill can call for a referendum. If no referendum is called or it is rejected, the bill is adopted and enters into force.

Besides the desire to make a bill referendum-proof, the traditional reliance on private-sector solutions and the strong ties of the dominating conservative parties to business interests (Mach & Trampusch, 2011) make the Swiss political system less prone to regulatory intervention.

### ***Research Questions and Methods***

The current TCA does not contain specific net neutrality regulations. It only lays down that government “may require providers of telecommunications services to publish information concerning the quality of telecommunications services provided by them,” which could also include information about the treatment of Internet data (Art. 12a [2], Telecommunications Act 1997, as amended). Only since the early 2010s has net neutrality attracted more attention in policymaking, and it was one of the topics discussed during the most recent revision of the TCA, adopted in 2019.

This article investigates the different stages of the Swiss net neutrality policy-making process from problem definition to adoption of the revised TCA. In particular, it addresses the following research questions:

*RQ1: Which actors participated in the policy-making process?*

*RQ2: What arguments did they employ to advocate or prevent particular regulatory solutions, and what was the result of this process?*

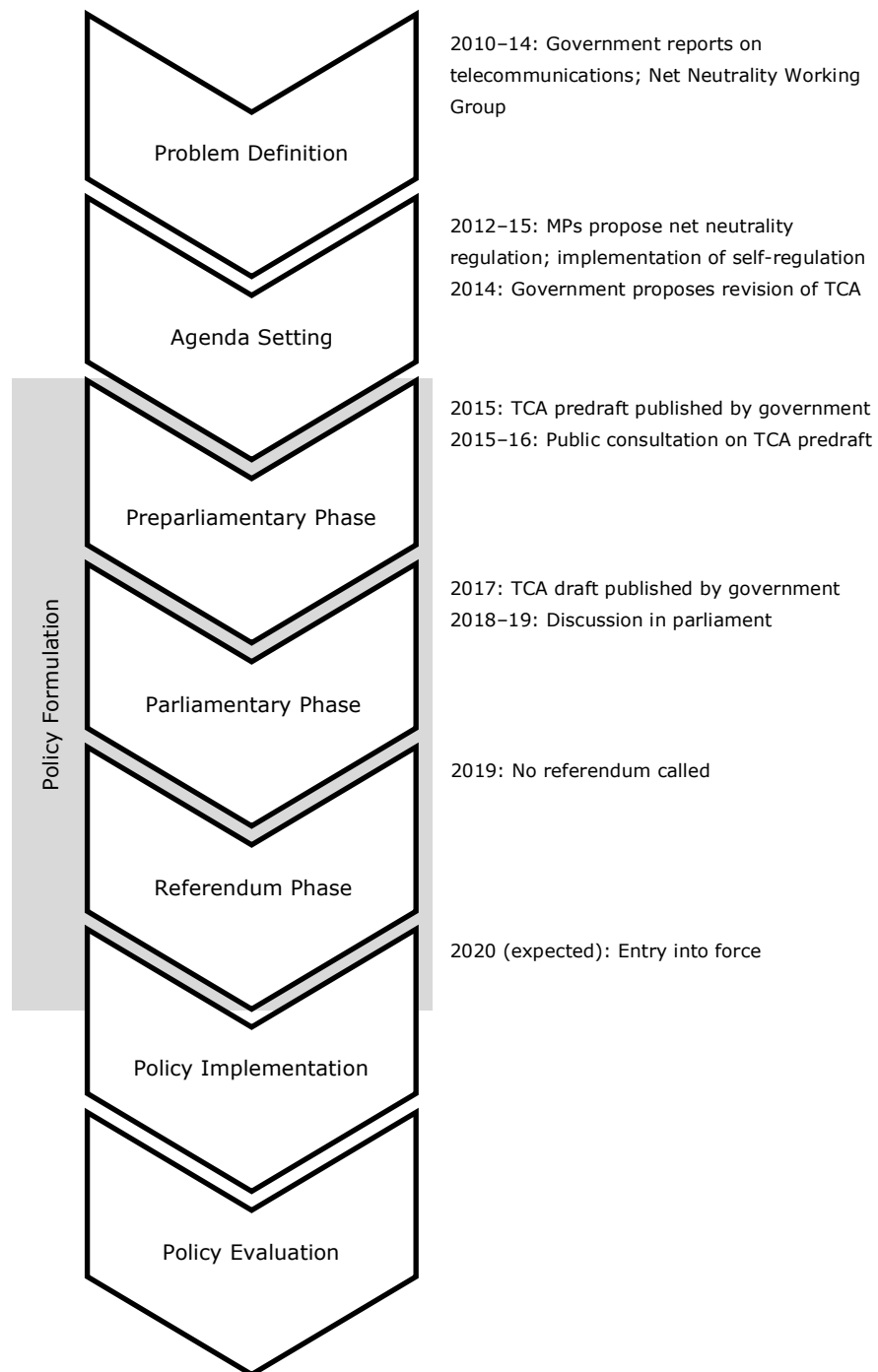
The institutional peculiarities of the political decision-making process in Switzerland, its general reluctance toward regulatory intervention, and the traditional reliance on private-sector solutions to regulatory problems provide indications that government and parliament will abstain from introducing net neutrality regulation. As the results will show, things played out quite differently.

To analyze the arguments of the various actors involved in the policy-making process, this study uses a qualitative content analysis of documents. First, all the documents relating to the Swiss TCA revision and attendant policy-making process that were available from the federal chancellery, the federal administration, and parliamentary services were collected. These included official documents such as government reports, TCA drafts, parliamentary motions and postulates, press releases, minutes of plenary debates in parliament, and 151 comments filed during the public consultation of the TCA draft. These documents were screened to regarding the information they contained about net neutrality. Altogether, net neutrality was only one of many topics—such as roaming or access to the last mile—in the TCA revision, and some documents mention it only briefly. For example, of the 151 actors that submitted a statement during the consultation, only 71 at least mentioned net neutrality. A rough appraisal of the word count of the parliamentary debates in the National Council and the Council of States indicates that only 6% to 8% of them concerned net neutrality. Only documents that discussed net neutrality were eventually incorporated and subjected to source criticism before analysis (Karppinen & Moe, 2019; Reh, 1995; Scott, 1990).

Next, the documents were analyzed by applying qualitative content analysis. While originating in the U.S. (Kracauer, 1952), until recently the method was most popular in German-speaking countries (Kuckartz, 2014; Mayring, 2015). More recently, there has been an uptake internationally (Julien, 2008; Puppis, 2019; Schreier, 2014) due to the method's systematic rule-based approach, its usefulness for reducing text material, and its suitability for both deductive and inductive coding. In this study, the documents were inductively coded with MAXQDA to reveal the arguments employed by the various actors involved in policymaking to advocate or avoid specific governance options and regulatory solutions about net neutrality in the different stages of the policy-making process. These codes were consistently applied to the entire corpus and related to arguments for and against transparency requirements, a regulation of net neutrality, and exemptions from regulation for specialized services. For each category, coded segments were then thematically compared before connecting the categories to each other.

## **Results**

This section discusses the results of the Swiss net neutrality policy-making process (see Figure 1 for an overview).



**Figure 1. The Swiss policy-making process and the case of net neutrality.**



### ***Problem Definition***

When the Swiss government first looked into the need to revise the TCA in the early 2010s, net neutrality was not yet considered a major issue. In 2010, because of a postulate adopted by the Council of States (the upper chamber of parliament), the government prepared a first report to evaluate the development of the telecommunications market and the need to revise the TCA. Among many other issues, the report discussed net neutrality and the opportunities and risks of its regulation (see Table 1).

***Table 1. Arguments For and Against Regulation Considered by Government.***

<b>Arguments</b>	
Against regulation	Restricts economic freedom and revenues sources of TSPs
	No incentive for investment in infrastructure
	Prevents necessary traffic management
	No need for regulation, as there is no market failure
For regulation	Discrimination against third-party services
	Impediment to innovation and market entry
	Market failure and abuse by TSPs
	Consumer protection
	Media diversity
	Freedom of information and expression

*Note.* Documents analyzed: Federal Council (2010, 2012).

The government eventually held that it was too soon to revise a law that had entered into force only in 2007 (Federal Council, 2010). After the respective select committees in both chambers of parliament discussed the report, they asked the government to prepare an updated report on the development of the telecommunications markets, which was published in 2012. The arguments for and against a regulation of net neutrality remained basically unchanged, and the government still did not feel that the time had come to revise the TCA. However, it promised to start working on a revision of the law before the end of the parliamentary term in fall 2015 (Federal Council, 2012).

As part of the government's preparatory work for a TCA revision, it created a Net Neutrality Working Group and invited representatives of the telecommunications industry, users, consumer-protection organizations, and public broadcasting to participate. The aim of the working group was to provide an overview of net neutrality to provide essential information for the revision of the law (see Table 2). The group published its report in fall 2014 (BAKOM, 2014).

**Table 2. Arguments For and Against Regulation Considered by the Net Neutrality Working Group.**

<b>Arguments</b>	
Against regulation	Restricts economic freedom of TSPs
	Impediment to innovation
	Prevents necessary traffic management
	Implementation problems
	No need for regulation as there is no market failure
For regulation	Discrimination against third-party services
	Impediment to innovation and market entry
	Market failure and abuse by TSPs
	Incentive for investment in infrastructure
	Competition law not sufficient
	Traffic management remains possible
	Consumer protection
	Internet as a basic infrastructure for society
	Media diversity
	Freedom of information and expression

*Note.* Document analyzed: BAKOM (2014).

### **Agenda Setting**

Unimpressed by the government's wait-and-see approach, MPs unsuccessfully tried to put net neutrality on the agenda themselves. In a motion on the legal stipulation of net neutrality submitted to the National Council (the lower chamber), the government was asked to enshrine net neutrality into law in the upcoming TCA revision. The MPs argued that net neutrality was necessary to protect freedom of information and expression, consumers and innovation, and to prevent discrimination against online services by third parties. The government considered the motion premature (see Table 3). Nevertheless, the National Council adopted it by a clear majority of 118 to 61, with 18 abstentions (Motion 12.4212, 2012; Official Bulletin of the National Council AB N, 2014, pp. 1134–1135; for a list of actors, see Table A1 in the Appendix).

Before the motion was discussed in the Council of States, two related developments took place. First, in late 2014, the telecommunications industry introduced a self-regulatory code and arbitration board on net neutrality to guarantee transparency for end users. The industry thus committed itself to safeguarding freedom of information and to refrain from blocking applications and services. Net neutrality as such, however, is not guaranteed by this self-regulation ("Code of Conduct Net Neutrality," 2017). Second, the government moved forward with the promised TCA revision. In its third report on the development of the Swiss telecommunications market, it announced a revision of the law that would also contain transparency requirements for (tele-)communications service providers with respect to net neutrality, but it refrained from stricter regulation, arguing that there are technical and economic reasons for preferential treatment of services (Federal Council, 2014).

When the motion to enshrine net neutrality in law was eventually discussed by the Council of States, it was rejected. The majority of MPs argued that the newly introduced self-regulation and the transparency requirements proposed by the government were sufficient. Stricter regulation was deemed unnecessary given that there was no evidence of market failure, and it was believed it would stifle innovation (Official Bulletin of the Council of States AB S, 2015, pp. 195–198; see Table 3).

**Table 3. Arguments For and Against Regulation Considered in Parliamentary Debates on Motion 12.4212.**

<b>Arguments</b>		<b>Actors</b>
Against regulation	Wait and see	Bieri/CVP, Federal Council
	Transparency obligation is sufficient	TTC-S, Federal Council
	Self-regulation is sufficient	TTC-S, Federal Council
	Reverse discrimination	TTC-S, Federal Council
	Impediment to innovation	TTC-S, Federal Council
	No need for regulation, as there is no market failure	TTC-S
For regulation	Discrimination against third-party services	Motion 12.4212
	Impediment to innovation and market entry	Motion 12.4212; Glättli/GP; Janiak/SP; Stadler/GLP; Recordon/GP
	Market failure and abuse by TSPs	Recordon/GP
	Traffic management remains possible	Motion 12.4212
	Consumer protection	Motion 12.4212; Glättli/GP; Janiak/SP, Stadler/GLP
	The Internet as a basic infrastructure for society	Glättli/GP
	Media diversity	Janiak/SP
	Freedom of information and expression	Motion 12.4212; Glättli/GP; TTC-S Minority; Janiak/SP; Recordon/GP

*Note.* Documents analyzed: Official Bulletin of the National Council AB N (2014); Official Bulletin of the Council of States AB S (2015); Motion 12.4212, 2012.

### ***Preparliamentary Phase of Policy Formulation***

Consistent with the announced course of action, the government's predraft of the new TCA published in late 2015 contained a requirement for (tele-)communications service providers to inform end users about any discrimination of content transmission (Telecommunications Act Pre-Draft 2015, authors' translation):

Article 12a "Information on telecommunications services"

(2) If they [the providers of telecommunications services] treat information technically or economically differently during transmission, they have to inform about it publicly.

(3) They inform publicly about the quality of telecommunications services offered.

The government argued that this transparency obligation helps in strengthening the consumers' sovereignty as well as consumer protection, allows for innovation, and keeps costs for TSPs low (UVEK, 2015). At this time, the U.S., the EU, and other countries had already adopted net neutrality provisions (e.g., Gerlach, 2016; Marsden, 2017). Nevertheless, the Swiss government did not see a need for regulation.

The subsequent public consultation on this predraft showed that opinions among parties, associations, corporations, and NGOs about net neutrality were sharply divided (UVEK, 2016; written statements by various actors—see Table 4 and Table A1 for an overview of involved actors). Of the 71 statements that touched on net neutrality, several were (nearly) identical, pointing to a concerted action of different coalitions (see Table A2 in the Appendix).

**Table 4. Actors Participating in the Public Consultation.**

Category	Actors
Political parties	BDP, CVP, FDP, GLP, GP, PP, SP, SVP
Federal bodies	Federal Media Commission, Price Regulator
Umbrella organizations	Economiesuisse, ICT Switzerland, SGB, SGV
Trade associations	telecommunications: asut, Glasfasernetz Schweiz, openaxs, Suissedigital
Companies	Broadcasting: RRR, TeleSuisse, VSP
	Telecommunications: Quickline, Salt, Sunrise, Swisscom, UPC, VTX
	Broadcasting: 3+, AZ Medien, SRG
	IT: Microsoft
Consumer protection organizations	ASCI, FRC, kf, SKS
NGOs	/ch/open, Digitale Gesellschaft, ISCO-CH, WikimediaCH

There was disagreement about whether the proposed transparency obligation was necessary at all (see Table 5). The federation of industries (Economiesuisse), the association of small and medium-sized businesses (SGV), the trade associations of telecommunications service providers (asut), fiber-optic networks (Glasfasernetz Schweiz), and cable networks (Suissedigital—and 20 identical statements by some of its members), as well as the big telecommunications companies (the incumbent Swisscom, UPC, and Salt) were opposed to the proposed requirement. They argued that self-regulation was sufficient and that there was no evidence of market failure that would require additional regulation. This coalition was supported by center-right parties (BDP, CVP) and a conservative consumer protection organization (kf). Moreover, Economiesuisse and Suissedigital worried that transparency requirements would hinder innovation.

**Table 5. Arguments For and Against Transparency Obligation During Public Consultation.**

<b>Arguments</b>		<b>Actors</b>
Against transparency obligation	No need for regulation, as there is no market failure	Economiesuisse, SGV asut, Suissedigital (and members), Glasfasernetz Schweiz TSP (Swisscom)
	Self-regulation sufficient	CVP, BDP Economiesuisse asut, Suissedigital (and members), Glasfasernetz Schweiz TSPs (Salt, Swisscom, UPC) kf various actors
	Impediment to innovation	Economiesuisse Suissedigital (and members)
	High costs	TSPs (Quickline, Salt)
	Competition law sufficient	TSP (Salt)
No position		ICT Switzerland
For transparency obligation	Self-regulation not sufficient	PP Federal Media Commission openaxs, VSP Microsoft SKS, FRC, ACSI NGOs
	Provide consumers with information	FDP, SP Price Regulator TSPs (Sunrise, VTX), Microsoft Various actors
	Impediment to innovation and market entry	GLP
	Low costs	Microsoft
	Consumer protection	SKS, FRC, ACSI
		Various actors

*Note.* Documents analyzed: BAKOM (2016); UVEK (2016).

Conversely, several actors emphasized that self-regulation was insufficient. These included various civil-society organizations committed to an "open Internet" (nearly identical statements by associations such as /ch/open, Verein Digitale Gesellschaft, and ISOC-CH, hereafter called NGOs), the Federal Media Commission, the trade associations of private radio stations (VSP), and electricity companies for the promotion of open broadband networks (openaxs), the main consumer protection organizations (SKS, FRC, ACSI), the Pirate Party (PP), and Microsoft. In addition, the Price Regulator, the Social-Democratic Party

(SP), and the Liberal Party (FDP), some (tele-)communications service providers, and Microsoft argued that transparency was needed to provide consumers with sufficient information. It was also argued that a transparency obligation was needed to allow for innovation (Green Liberal Party GLP), protect consumers (consumer protection organizations SKS, FRC, ACSI), and would be inexpensive for telecommunications companies (Microsoft).

Actors also raised the issue of whether statutory regulation beyond transparency requirements was needed to guarantee net neutrality (see Table 6).

**Table 6. Arguments For and Against Stricter Regulation During Public Consultation.**

<b>Arguments</b>		<b>Actors</b>
Against regulation	No need for regulation, as there is no market failure	BDP
		TSP (Swisscom) various actors
	Transparency obligation is sufficient	FDP
		Suissedigital (and members)
		TSPs (Salt, VTX) various actors
No position	Impediment to innovation	BDP
	No incentive for investment in infrastructure	SGV
	Favors global companies	SGV
For regulation	Discrimination against third-party services	TSP (VTX)
		ICT Switzerland
		SGB
		RRR, TeleSuisse, VSP
	Impediment to innovation and market entry	Broadcasters (3+, AZ, SRG), Microsoft
		NGOs
		SP, GLP
	Transparency not sufficient	openaxs, RRR, TeleSuisse, VSP
		Broadcasters (3+, AZ, SRG), Microsoft
		NGOs
		GLP, GP, SPS, PP
		Federal Media Commission
		SGB
		RRR, TeleSuisse, VSP
		Broadcasters (3+, AZ, SRG), Microsoft
		SKS, FRC, ACSI
		NGOs
		various actors

Self-regulation not sufficient	PP Federal Media Commission openaxs, VSP Microsoft SKS, FRC, ACSI NGOs
Market failure and abuse by TSPs	GLP RRR, TeleSuisse, VSP Broadcasters (3+, AZ, SRG), Microsoft NGOs
Traffic management remains possible	SP Microsoft NGOs
Consumer protection	SP RRR, TeleSuisse, VSP Broadcasters (3+, AZ, SRG), Microsoft SKS, FRC, ACSI NGOs
The Internet as a basic infrastructure for society	SP SGB Microsoft, TSP (Init7)
Media diversity	Federal Media Commission RRR, TeleSuisse, VSP Broadcasters (3+, AZ, SRG) WikimediaCH
Adapt to EU regulation	Microsoft various actors
Freedom of information and expression	SP RRR, TeleSuisse, VSP Broadcasters (3+, AZ, SRG) WikimediaCH

*Note.* Documents analyzed: BAKOM (2016); UVEK (2016).

Generally, actors that opposed the transparency obligation also rejected stricter regulation. Yet some of the actors who supported transparency also voiced their opposition to enshrining net neutrality in law. They argued that additional regulation was unnecessary (Swisscom, center-right party BDP) or that transparency requirements go far enough (Suissedigital and many of its members, TSPs, Liberal Party FDP). Additional arguments against regulation were obstacles to innovation (SGV, BDP) and to investment in infrastructure (SGV).

Conversely, a broad coalition of actors ranging from center-left parties and unions to media companies supported the inclusion of the net neutrality principle in the new TCA. Several actors argued that a transparency requirement was not enough—namely, the major public and private broadcasters and their trade associations (joint statement by SRG, 3+, AZ Medien, Goldbach, RRR, TeleSuisse, VSP), center-left parties (SP, GP, GLP, PP), the federation of trade unions (SGB), the main consumer protection organizations (SKS, FRC, ACSI), the Federal Media Commission, civil society organizations committed to an “open Internet” (NGOs), and Microsoft. They advocated regulation both on economic and social grounds. Economic arguments included consumer protection (NGOs, consumer protection organizations, broadcasters, Microsoft), obstacles to innovation and market entry (NGOs, center-left parties SP and GLP, broadcasters, Microsoft, openaxs), the need to prevent discrimination against third-party online services (NGOs, broadcasters, SGB, Microsoft), as well as market failure (NGOs, GLP, broadcasters, Microsoft). In addition, few actors also called for regulation referring to social objectives such as media diversity (Federal Media Commission, broadcasters, WikimediaCH), freedom of information and expression (SP, broadcasters, WikimediaCH), and preserving the Internet as a basic infrastructure (SGB, SP, Microsoft). Interestingly, only a few actors noted that the EU had also passed a net neutrality regulation and argued that Switzerland should adapt to these rules.

### ***Parliamentary Phase of Policy Formulation***

Once the public consultation ended, the government decided to refrain from stronger regulation and sent the bill to parliament basically unchanged, at least with respect to net neutrality. Articles 12a (2) and (3) of the 2017 TCA draft (Telecommunications Act Draft 2017) still contained the same requirements for telecommunications service providers to inform the public if they were treating information differently during transmission and to inform about the quality of service. Given the contradictory feedback about net neutrality regulation, the government regarded its original proposition as a working compromise (Federal Council, 2017, p. 6601).

However, in parliament, the draft bill underwent some decisive changes. A majority of the select committee for transport and telecommunications of the National Council (TTC-N) suddenly proposed stronger regulation in a new Article 12e dedicated to the “open Internet” (TTC-N, 2018, authors’ translation):

#### **Article 12e “Open Internet”**

- (1) Internet access service providers transmit information without distinguishing either technically or economically between senders, receivers, content, services, service classes, protocols, applications, programs, or terminal equipment used.
- (2) They may transmit information differently if this is necessary to
  - a. comply with legal provisions or a court decision;
  - b. preserve the integrity or security of the network, of services provided via that network, or of the connected terminal equipment;
  - c. fulfill the explicit request of customers; or
  - d. combat temporary and exceptional network congestion, provided that equivalent kinds of data traffic are treated equally.
- (3) If they treat information technically or economically differently during transmission, they have to publicly inform their customers.



In autumn 2018, the proposal won a majority in the National Council despite government opposition (Official Bulletin of the National Council AB N, 2018, pp. 1691–1709, 1711–1726). In the parliamentary debate, no one put forward any arguments against the transparency obligation proposed by the government—despite the strong opposition during the public consultation (see Table 7; for a list of actors, see Table A1 in the Appendix).

**Table 7. Arguments For and Against Transparency Obligation in Parliament.**

<b>Arguments</b>		<b>Actors</b>
Against transparency obligation	–	–
For transparency obligation	Provide consumers with information	Federal Council

*Note.* Document analyzed: Official Bulletin of the National Council AB N (2018).

An even greater surprise than the absence of opposition to transparency requirements was that an overwhelming majority followed the select committee and voted in favor of the newly proposed regulation (182 votes in favor, five against). MPs across the political spectrum argued that transparency requirements and self-regulation were insufficient to guarantee net neutrality. Rather, reinforcing the principle in law was deemed necessary to prevent discrimination against third-party services, protect consumers, safeguard innovation and market entry, as well as to preserve an “open Internet” as a basic infrastructure for society. In contrast to the public consultation, the government was alone in arguing that stricter regulation could hinder innovation and was unnecessary because of a lack of market failure, the existence of competition law, self-regulation, and the proposed transparency obligation (see Table 8). Its representative claimed that such transparency would provide sufficient information for “customers to vote with their feet and change their Internet access provider” (Federal Councilor Doris Leuthard, Official Bulletin of the National Council AB N, 2018, p. 1714).

**Table 8. Arguments For and Against Stricter Regulation in Parliament.**

<b>Arguments</b>		<b>Actors</b>
Against regulation	No need for regulation, as there is no market failure	Federal Council
	Transparency obligation is sufficient	Federal Council
	Restricts economic freedom/impediment to innovation/self-regulation sufficient/reverse discrimination/competition law sufficient	Federal Council
No position		Hiltbold/FDP
For regulation	Discrimination against third-party services	Grossen/GLP
	Impediment to innovation and market entry	Töngi/GP; Ammann/CVP; Grossen/GLP
	Transparency not sufficient	TTC-N; Burkart/FDP; Rickli/SVP
	Self-regulation not sufficient	Rickli/SVP
	Market failure and abuse by TSPs	Rickli/SVP
	Traffic management remains possible	Aebischer/SP
	Consumer protection	Ammann/CVP; Rickli/SVP; Aebischer/SP; Grossen/GLP
	The Internet as a basic infrastructure for society	TTC-N; Hardegger/SP; Töngi/GP; Grossen/GLP; Aebischer/SP
	Provide consumers with information	Hurter/SVP; Rickli/SVP; Grossen/GLP

*Note.* Documents analyzed: Official Bulletin of the National Council AB N (2018); Official Bulletin of the Council of States AB S (2018).

The Council of States' select committee for transport and telecommunications (TTC-S) was more reluctant about the newly proposed article and unanimously suggested amending the National Council's formulation with an exemption for specialized services (TTC-S, 2018, authors' translation):

## Article 12e "Open Internet"

(2<sup>bis</sup>) In addition to Internet access services, they [the providers of Internet access services] may offer other services using the same connection that do not offer access to the Internet and that are optimized for specific content, applications, or services if

- a. the optimization is necessary to meet quality requirements of customers for such content, applications, or services;
- b. the network capacity is sufficient to provide these services in addition to Internet access services provided;
- c. the other services are not usable or offered as a replacement for Internet access services;
- d. the other services are not to the detriment of the availability or general quality of Internet access services for end users.

The plenary debate in the Council of States only briefly touched on net neutrality and did not fundamentally question the need for regulation (Official Bulletin of the Council of States AB S, 2018, pp. 822–840). The debate focused entirely on the exemption for specialized services, and nobody argued against it (see Table 9).

**Table 9. Arguments For and Against Exemption for Specialized Services in Parliament.**

Arguments		Actors
Against exemption	–	–
For exemption	Flexibility and innovation	TTC-S
	Guarantee minimum quality of specialized services	TTC-S, Federal Council
	Compatibility with EU regulation	TTC-S, Federal Council

*Note.* Document analyzed: Official Bulletin of the Council of States AB S (2018).

MPs followed their select committee and voted in favor of such an exemption to guarantee the quality of specialized services (e.g., IPTV, self-driving cars, emergency services), allow for flexibility and innovation (especially in light of the upcoming 5G standard), and establish compatibility with EU regulations. Indeed, the amendment leads to an alignment with some EU rules ("Regulation [EU] 2015/2120," 2015, Art. 3). Altogether, the EU regulation is substantially longer, containing specifics about network management practices (e.g., no monitoring of specific content; no commercial interest, but technical necessity; personal data processing), but the Swiss counterpart is inspired by it and shares substantive ideas, especially about specialized services. Although the government still did not see the need for regulation beyond transparency requirements, it accepted a solution that would avoid adopting a stricter regulation than the EU's:

The principle of equality adopted by the National Council is hard regulation . . . . It would go beyond EU regulation . . . . The provision designed by your committee is at least compatible with the EU. It is still regulation for an area where there is no problem. . . . But we can live with that. (Federal Councilor Doris Leuthard, Official Bulletin of the Council of States AB S, 2018, p. 831, authors' translation)

In the second reading of the bill, the National Council's select committee decided to support the exemption for specialized services. However, it proposed a more simplified provision than was suggested by the federal administration (BAKOM, 2019; TTC-N, 2019, authors' translation):

Article 12e "Open Internet"

(3) In addition to Internet access services, they [the providers of Internet access services] may offer other services using the same connection that have to be optimized for specific content, applications, or services to meet quality requirements of customers. The other services may not be usable or offered as a replacement for Internet access services, and they may not be to the detriment of the quality of Internet access services.

Both chambers of parliament voted in favor of this simplified formulation and adopted the revised TCA in March 2019 (Official Bulletin of the National Council AB N, 2019; Official Bulletin of the Council of States AB S, 2019). Because nobody called a referendum, the revised act including net neutrality regulation is projected to enter into force in 2020.

### Discussion and Conclusion

Net neutrality has become a fiercely debated issue because of concerns that ISPs might block, prioritize, or throttle Internet traffic. This article's aim was to shed more light on how policies are developed and to analyze the arguments employed by the actors involved to advocate or prevent specific regulatory solutions for net neutrality in Switzerland.

Regarding the outcome of policymaking, the Swiss parliament opted to stipulate net neutrality by law against the will of the telecommunications industry (which advocated self-regulation) and the government (which favored a transparency obligation). This outcome is rather surprising, given that there are various institutional characteristics of the political decision-making process (e.g., prospective referendum) as well as Switzerland's traditional aversion to regulation and its trust in private-sector solutions that would have indicated otherwise.

Focusing on the actors involved in policymaking and their arguments, it becomes evident that the two opposing camps often discussed in research (CAPs and NGOs for regulation, and ISPs against regulation) are only identifiable during early stages of the policy process. The strong relationship between the net neutrality debate and partisan politics found in the U.S. (Faris et al., 2016; Hart, 2011) cannot be confirmed in the Swiss case. After an initial split along party lines, parliamentary debates showed agreement across the political spectrum. However, in line with previous research (Cheng et al., 2012; Hart, 2011), both camps employed economic arguments that emphasize competition, property rights, investment, and innovation. Proponents of regulation also used sociopolitical arguments (e.g., freedom of information, the Internet as a basic infrastructure, media diversity), but these were less prevalent and mainly voiced by left-wing parties, unions, and broadcasters.

To understand why proponents of net neutrality ultimately succeeded and why parliament opted for regulation is more difficult. As select committee meetings are confidential, the negotiations and interactions in committees remain a black box for researchers until minutes become available for research

or the participants agree to share insights. If at all, this usually happens only after the law has been implemented. At that point, interviews may be a good option to shed more light on this issue.

For now, there are only theoretical explanations. An obvious answer would be policy diffusion and compatibility with EU regulations. Though not obligated to adopt EU law, Switzerland often unilaterally adapts to it. However, EU compatibility was a rare argument in the debate.

Political dynamics in negotiations seem to offer a more powerful explanation. Net neutrality was only one of many issues discussed during the TCA revision, and horse-trading was presumably a necessity. Agreeing to net neutrality regulation may have been considered less fraught with consequences than, for example, agreeing to complete last-mile unbundling—a proposal that was eventually dropped. The generic exemption for specialized services, the permission to differentiate upon customers' explicit request, and the de facto impossibility of ultimately verifying whether traffic management happens in violation of such rules point to eventually limited effects for ISPs. So far, few complaints have been filed with the self-regulatory arbitration board, which recently announced it was terminating its activity because of lack of demand and the newly adopted law. It is unlikely that more complaints will arise after the law comes into force. The exemption for specialized services may also have made it feasible for parliamentarians from across the political spectrum to agree to regulation, even more so as no unified business interests existed. Furthermore, the term "net neutrality" has evolved in a way that allows for subsuming very different policy objectives under it.

It is unclear whether net neutrality regulation will be effective in realizing policy objectives as varied as competition, innovation, media diversity, or freedom of expression. It is also uncertain whether net neutrality is really an adequate principle for the future development of the Internet and a satisfactory means for all the facets it seeks to address. In this vein, evaluating the impact, enforcement, and supervision of net neutrality regulation will require more scholarly attention in the future.

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## Appendix

**Table A1: List of Actors.**

<b>Actor</b>	<b>Description</b>
<b>Parliament</b>	
TTC-N	Select committee for Transport and Telecommunications of the National Council
TTC-S	Select committee for Transport and Telecommunications of the Council of States
<b>Political parties</b>	
BDP	Conservative Democratic Party
CVP	Christian Democratic People's Party
FDP	Liberal Party
GLP	Green Liberal Party
GP	Green Party
PP	Pirate Party
SP	Social Democratic Party
SVP	Swiss People's Party
<b>Federal administration</b>	
Federal Media Commission	Independent advisory body on the media
Price Regulator	Authority monitoring price development in markets and eliminating abusive prices (increases or retention)
<b>Umbrella organizations</b>	
Economiesuisse	Federation of industries
SGV	Association of small and medium-sized businesses
ICT Switzerland	Organization representing the digital economy
SGB	Federation of trade unions
<b>Trade associations</b>	
asut	Telecommunications service providers
Glasfasernetz Schweiz	Fiber-optic providers
openaxs	Electricity companies for the promotion of open broadband networks
Suissedigital	Cable networks
RRR	French-language regional radio stations
TeleSuisse	Private TV stations
VSP	Private radio stations

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<b>Individual companies</b>	
Broadcasting	3+ (commercial TV), AZ Medien (commercial TV), Goldbach (advertising marketer), SRG (public service broadcaster),
Telecommunications	Quickline, Salt, Sunrise, Swisscom (incumbent), UPC, VTX
IT	Microsoft
<b>Consumer protection organizations</b>	
ACSI	Main consumer protection organization (Italian)
FRC	Main consumer protection organization (French)
kf	Conservative consumer protection organization
SKS	Main consumer protection organization (German)
<b>Others</b>	
/ch/open	Association promoting open source and open standards
Digitale Gesellschaft	NGO advocating basic rights in digital society
ISOC-CH	Internet Society Switzerland Chapter
WikimediaCH	Swiss Chapter of Wikimedia Foundation

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**Table A2: Actors with Joint or (Nearly) Identical Statements.**


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<b>Group</b>	<b>Actors</b>
NGOs in favor of an open Internet	(Nearly) identical statements by 10 actors, including NGOs, WikimediaCH, /ch/open, Internet Society Chapter Switzerland, Digitale Gesellschaft, and the Pirate Party
Broadcasters	Joint statement by the trade associations of private TV (TeleSuisse) and radio (VSP and RRR) as well as media organizations SRG (public service broadcaster), 3+ (commercial TV), AZ Medien (commercial TV), and Goldbach (advertising marketer)
Cable TV and broadband providers	(Nearly) identical statements by Suissedigital (trade association of cable networks) and 20 of its member organizations
Consumer protection organizations	Identical statements by SKS, FRC, and ACSI (main consumer protection organizations in the different language regions)

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